

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

HOWARD UNIVERSITY HOSPITAL
and MIKE CHARRON
Respondents

Case Nos.: C-00-10351
I-00-10239

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. Introduction

On August 18, 2000, the Government served a Notice of Infraction upon Respondents Howard University Hospital and Mike Charron alleging a violation of 21 DCMR 534.2, which requires the owner or other person in control of a storm water management facility to maintain the facility in good condition and to perform any necessary repair and restoration of the facility. The Notice of Infraction alleged that the violation occurred on August 11, 2000 and sought a fine of \$100.00.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code §6-2715). Accordingly, on September 14, 2000, this administrative court issued an order

finding Respondents in default, assessing a statutory penalty¹, and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction (No. 00-10239) on September 19, 2000. Respondents again failed to answer that Notice within twenty days of service. Accordingly, on November 8, 2000, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and assessing total penalties of \$200.00 pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B).² The Final Notice of Default also set December 13, 2000 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

All parties appeared for the December 13 hearing. Walter Caldwell, the inspector who issued the Notices of Infraction appeared on behalf of the Government, and Respondent Mike Charron appeared on his own behalf and on behalf of Respondent Howard University Hospital, where he is employed as Director of Health Center Engineering. At the hearing, Respondents entered a plea of Admit with Explanation, and sought a reduction of the fine.

¹ D.C. Code § 2-2704(a)(2)(A) authorizes the imposition of a penalty equal to the amount of the fine sought if a Respondent fails to file a timely answer to a first Notice of Infraction. The September 14 order erroneously stated that Respondents had been charged with violating 21 DCMR 532.4(c) in addition to the violation of 21 DCMR 534.2 that is alleged in the Notice of Infraction. Based on that erroneous statement, the September 14 order assessed a penalty of \$200.00, instead of the correct amount of \$100.00.

² The November 8 order correctly stated the applicable penalty for Respondent's failure to answer the second Notice of Infraction.

Based upon the evidence in the record, including my evaluation of the credibility of the witnesses, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 21 DCMR 534.2 on August 11, 2000.
2. Respondents did not properly maintain an underground sand filter located in a parking lot on the grounds of Howard University Hospital. That sand filter is part of a storm water management facility designed to remove pollutants from storm water runoff.
3. Mr. Charron was aware that the sand filter needed maintenance and had asked one of his subordinates to arrange for the required work with a contractor. However, the subordinate did not follow through.
4. After issuance of the Notices of Infraction, Mr. Charron arranged for the sand filter to be properly cleaned and maintained. Mr. Caldwell agreed that the required maintenance occurred as of October 19, 2000.
5. Respondents have accepted responsibility for their violation.
6. Respondents offered no evidence to explain their failure to file timely answers to the Notices of Infraction. Mr. Charron testified that he did not know why answers had not been filed.

III. Conclusions of Law

1. By failing to maintain the sand filter in proper working order, Respondents violated 21 DCMR 534.2 on August 11, 2000.
2. A fine of \$100 is authorized for violations of § 534.2. 16 DCMR 3234.2(o). Respondents' acceptance of responsibility and their efforts to correct the violation warrant a reduction in the amount of that fine. Because Respondents did not correct the violation until about two months after issuance of the Notice of Infraction, however, the fine is reduced only to \$75.00.
3. The Civil Infractions Act, D.C. Code §§ 6-2712(f) and 6-2715, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Code §§ 6-2704(a)(2)(B), 6-2712(f). Because Respondents offered no explanation for their failure to answer the Notices of Infraction, there is no basis for concluding that they had good cause for their failure to answer the Notices of Infraction, and this record offers no basis to suspend or reduce the statutory penalty of \$200.00.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **TWO HUNDRED SEVENTY-FIVE DOLLARS (\$275.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code §

6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C.
Code § 6-2703(b)(6).

/s/ **6-6-01**

John P. Dean
Administrative Judge